IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/08/2003

CORAM

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION No.41362 of 2002
and
WPMP No.61224 of 2002

Jacob Educational Medical and Charitable
Trust - rep., by its Chairman
Dr.A.Jacob Raja, No.70-A, Azath Nagar,
K.K.Nagar Post,
Tiruchirapalli-620 021. .. Petitioner

-Vs-

1. The Govt. of Tamil Nadu,
rep., by its Secretary,
Health and Family Welfare,
Fort St. George,
Chennai-9.

2.The Director of Medical Education,
Chennai-10. .. Respondents

Writ petition under Article 226 of the Constitution of India
praying this Court for the issue of a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the first respondent passed in letter No.MS No.212 Health and Family Welfare Department dated 24.10.2002 and to quash the same and to direct the respondents to issue Essentiality Certificate to the petitioner Trust for establishing a Dental College in the name and style of "Sofia Dental College" at Nagamangalam, Tiruchirapalli District.

!For Petitioner : Mr.P.Jyothimani

^For Respondents : Mr.M.G.H.Varadarajan,
Additional Govt. Pleader.

:O R D E R
By consent of both the parties, the writ petition itself is
taken up for disposal.

2. This is the third round of litigation by the petitioner
who has been forced to approach this Court for the purpose of getting Essentiality Certificate from the respondent State Government. On an earlier round of litigation, this Court found that by sheer mistake in noting the land

availability as 5950 sq.ft., instead of the actual area of 5950 sq. meter and also in not taking into account the bank guarantee to the extent of Rs.1,50,000/- remitted by the petitioner, the rejection came to be made. That order was passed in W.P.No.4097 of 2002. Earlier to that in W.P.No.7154 of 2001, there was a direction to the respondent State Government to pass orders on the petitioner's application for issuance of Essentiality Certificate for the purpose of opening a Dental College. After the order dated 12.7.2002 in W.P.No.40 97 of 2002, an inspection team consisting of high level officials in the medical field were constituted who inspected the petitioner's proposed institution on 9.8.2002. They have also filed a report and the said report consists of a detailed consideration of the various facilities and aspects which are available in the petitioner-institution.

3. The ultimate remarks and recommendations of the inspection team as stated therein reads under:-
"REMARKS AND RECOMMENDATIONS
On inspection of the proposed new Dental College in the style of " Sofia Dental College" by Jacob Educational, Medical and Charitable Trust, we are to remark that
1) The Trust has got the required area of land with constructed buildings situated in a rural area.
2) The infrastructural facilities including building constructions, teaching staff employment including Medical, Dental, Para Clinical Medical Sciences, Hospital facilities for Medicine and Surgery, Hostel and Mess facilities are available with the Trust and they conform to the norms prescribed by the Dental Council of India.

The inspection was carried out meticulously with all the norms of Dental Council of India and regulations kept in mind.
The proposed Dental College and Hospital would provide good education to the students and the students need not go to neighbouring states for dental studies.
After analysing the above facts, the inspection team recommends that starting a Dental College in the above premises would provide health to the poor people, help in the development of the rural area and to provide education to the student population.
The inspection team also finds on inspection that the proposed Dental College by the Jacob Educational, Health and Charitable Trust, fulfills the norms and requirements formulated by the Dental Council of India and as per the guidelines formed by the Government.
The inspection team recommends for issuing Essentiality Certificates to the Trust to start the proposed Dental College".

4. Unfortunately, in spite of such recommendations having been made by the inspection team, by the impugned proceedings dated 24.10.2002 , six deficiencies have been noted for rejecting the issuance of the Essentiality Certificate and I find all the six of them to be contrary to the factual findings of the inspection committee. In such circumstances, I can only conclude that the first respondent was only disinclined to issue the Essentiality Certificate for no valid reason. In this context, learned counsel for the petitioner drew my attention to the judgment of a Division

Bench of this Court dated 23.4.2003 in W.P.Nos.38106 and 38107 of 2002 as well as Writ Appeal Nos.1702, 1927 and 2144 of 2002 wherein, the Division Bench has clearly stated that the role of the State Government while considering an application for the issuance of the Essentiality Certificate was very limited in nature and in para 42 of the said judgment, the Division Bench has held as under:

"42. Government of States/Union Territories must reconcile themselves to the fact that professional education in the fields of Dentistry, Medicine and Engineering being covered by the Dentists Act, Indian Medical Council Act and AICTE Act, their role is a very limited one. While considering the application for grant of certificate regarding desirability and feasibility of the location, their approach should not be a negative one of seeking to find some reason or other to reject the request".
(Emphasis added)

5. The inspection team was of the view that the proposed Dental College by the petitioner institution not only fulfilled the norms and requirements formulated by the Dental Council of India, but also recommended that the starting of the Dental College in the above said premises would provide better health conditions to the poor people, help in the development of the rural area and would also provide education to the student population. When such lofty reasons weighed with the inspection team sent by the State Government while making its recommendations for the issuance of the Essentiality Certificate, the impugned order dated 24.10.2002 by the first respondent after the receipt of the said inspection report dated 26.8.2002 is uncalled for and unsustainable. It only shows that the first respondent State Government only wanted to invent reasons and state lame excuses to reject the petitioner's application for issuance of a Essentiality Certificate. Such an attitude of the first respondent State Government can never be appreciated, which ought not to have been done in the interest of the public at large.

6. Therefore, I am of the view that there is no point in once again directing the first respondent State Government to consider the petitioner's application and pass fresh orders, more-so, in the light of the categorical findings of the inspection team that the issuance of the Essentiality Certificate in the case on hand is imminent and necessary in the interest of the poor people living in and around the area where the proposed institution is to be located and in promoting the cause of Education. The first respondent is therefore hereby directed to issue the Essentiality Certificate asked for by the petitioner as per the recommendations of the inspection team within a period of two weeks from the date of receipt of a copy of this order.

7. With the above directions, the writ petition stands allowed. No costs. Consequently, connected WPMP is closed.

Index : Yes.
Internet : Yes.

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To

1. The Secretary,
Govt. of Tamil Nadu,
Health and Family Welfare,
Fort St. George,
Chennai-9.

2. The Director of Medical Education,
Chennai-10.